

ASSEMBLY BILL

No. 2442

Introduced by Assembly Member Nakanishi

February 21, 2008

An act to amend Sections 821.5 and 821.6 of the Business and Professions Code, relating to healing arts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2442, as introduced, Nakanishi. Medicine: peer review proceedings.

Existing law provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law requires peer review bodies that review physicians and surgeons to report certain information regarding investigations of physicians and surgeons who may be suffering from a disabling mental or physical condition to the diversion program of the Medical Board of California, and requires the diversion program administrator to carry out specified duties in this regard. Existing law requires the board to adopt regulations implementing the monitoring responsibility of the diversion program administrator on or before January 1, 1997, as specified. Under existing law, the diversion program becomes inoperative on July 1, 2008.

This bill would transfer the duties of the diversion program and the diversion program administrator with regard to the peer review body reports to the Medical Board of California and the board's executive director or designee. The bill would require the board to adopt regulations implementing the monitoring responsibility of the executive director or designee on or before January 1, 2009, as specified. The bill would make conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 821.5 of the Business and Professions
2 Code is amended to read:

3 821.5. (a) A peer review body, as defined in Section 805, that
4 reviews physicians and surgeons, shall, within 15 days of initiating
5 a formal investigation of a physician and surgeon's ability to
6 practice medicine safely based upon information indicating that
7 the physician and surgeon may be suffering from a disabling mental
8 or physical condition that poses a threat to patient care, report to
9 ~~the diversion program of the Medical Board~~ the name of the
10 physician and surgeon under investigation and the general nature
11 of the investigation. A peer review body that has made a report
12 ~~under this section to the diversion program under this section~~
13 *Medical Board's executive director or designee, who is not in the*
14 *enforcement program*, shall also notify ~~the diversion program~~
15 *executive director or designee* when it has completed or closed an
16 investigation.

17 (b) ~~The diversion program administrator~~ *executive director or*
18 *designee*, upon receipt of a report pursuant to subdivision (a), shall
19 contact the peer review body that made the report within 60 days
20 in order to determine the status of the peer review body's
21 investigation. ~~The diversion program administrator~~ *executive*
22 *director or designee* shall contact the peer review body periodically
23 thereafter to monitor the progress of the investigation. At any time,
24 if ~~the diversion program administrator~~ *executive director or*
25 *designee* determines that the progress of the investigation is not
26 adequate to protect the public, ~~the diversion program administrator~~
27 *executive director or designee* shall notify the chief of enforcement
28 of the ~~Division of Medical Quality of the Medical Board of~~
29 California, who shall promptly conduct an investigation of the
30 matter. Concurrently with notifying the chief of enforcement, the
31 ~~diversion program administrator~~ *executive director or designee*
32 shall notify the reporting peer review body and the chief executive

1 officer or an equivalent officer of the hospital of its decision to
2 refer the case for investigation by the chief of enforcement.

3 (c) For purposes of this section, “formal investigation” means
4 an investigation ordered by the peer review body’s medical
5 executive committee or its equivalent, based upon information
6 indicating that the physician and surgeon may be suffering from
7 a disabling mental or physical condition that poses a threat to
8 patient care. “Formal investigation” does not include the usual
9 activities of the well-being or assistance committee or the usual
10 quality assessment and improvement activities undertaken by the
11 medical staff of a health facility in compliance with the licensing
12 and certification requirements for health facilities set forth in Title
13 22 of the California Code of Regulations, or preliminary
14 deliberations or inquiries of the executive committee to determine
15 whether to order a formal investigation.

16 For purposes of this section, “usual activities” of the well-being
17 or assistance committee are activities to assist medical staff
18 members who may be impaired by chemical dependency or mental
19 illness to obtain necessary evaluation and rehabilitation services
20 that do not result in referral to the medical executive committee.

21 (d) Information received by the ~~diversion program board~~
22 pursuant to this section shall be governed by, and shall be deemed
23 confidential to the same extent as program records under, Section
24 2355. The records shall not be further disclosed by the ~~diversion~~
25 ~~program board~~, except as provided in subdivision (b).

26 (e) Upon receipt of notice from a peer review body that an
27 investigation has been closed and that the peer review body has
28 determined that there is no need for further action to protect the
29 public, the ~~diversion program board~~ shall purge and destroy all
30 records in its possession pertaining to the investigation unless the
31 ~~diversion program administrator~~ *executive director or designee*
32 has referred the matter to the chief of enforcement pursuant to
33 subdivision (b).

34 (f) A peer review body that has made a report under subdivision
35 (a) shall not be deemed to have waived the protections of Section
36 1157 of the Evidence Code. It is not the intent of the Legislature
37 in enacting this subdivision to affect pending litigation concerning
38 Section 1157 or to create any new confidentiality protection except
39 as specified in subdivision (d). ~~“Pending litigation” shall include~~

1 ~~Arnett v. Dal Cielo (No. S048308), pending before the California~~
2 ~~Supreme Court.~~

3 (g) The report required by this section shall be submitted on a
4 short form developed by the board. The board shall develop the
5 short form, the contents of which shall reflect the requirements of
6 this section, within 30 days of the effective date of this section.
7 The board shall not require the filing of any report until the short
8 form is made available by the board.

9 (h) This section shall become operative on January 1, ~~1997~~,
10 unless the regulations required to be adopted pursuant to Section
11 821.6 are adopted prior to that date, in which case this section shall
12 become operative on the effective date of the regulations.

13 SEC. 2. Section 821.6 of the Business and Professions Code
14 is amended to read:

15 821.6. The board shall adopt regulations to implement the
16 monitoring responsibility of the ~~diversion program administrator~~
17 *executive director or designee* described in subdivision (b) of
18 Section 821.5, and the short form required to be developed pursuant
19 to subdivision (g), on or before January 1, ~~1997~~ 2009.

20 SEC. 3. This act is an urgency statute necessary for the
21 immediate preservation of the public peace, health, or safety within
22 the meaning of Article IV of the Constitution and shall go into
23 immediate effect. The facts constituting the necessity are:

24 In order to ensure that duties of the diversion program of the
25 Medical Board of California are transferred prior to the inoperative
26 date of that program, it is necessary that this act take effect
27 immediately.